

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

SALEM HARBOR POWER
DEVELOPMENT LP (f/k/a Footprint Power
Salem Harbor Development LP), *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10239 (MFW)

(Jointly Administered)

**ORDER (A) APPROVING THE ADEQUACY OF THE
DISCLOSURE STATEMENT; (B) APPROVING THE SOLICITATION AND NOTICE
PROCEDURES WITH RESPECT TO CONFIRMATION OF THE DEBTORS'
JOINT CHAPTER 11 PLAN; (C) APPROVING THE FORMS OF BALLOTS
AND NOTICES IN CONNECTION THEREWITH; (D) SCHEDULING CERTAIN
DATES WITH RESPECT THERETO; AND (E) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the Debtors for entry of an order pursuant to sections 105, 1125, 1126, and 1128 of the Bankruptcy Code, Bankruptcy Rules 2002, 3016, 3017, 3018, 3020, and Local Rules 2002-1, 3017-1, 3018-1, and 3020-1 (a) approving the Disclosure Statement, (b) approving the Solicitation and Notice Procedures with respect to confirmation of the Plan, (c) approving the forms of Ballots and Notices in connection therewith, (d) scheduling certain dates with respect thereto, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Salem Harbor Power Development LP (f/k/a Footprint Power Salem Harbor Development LP) (1360); Highstar Salem Harbor Holdings GP, LLC (f/k/a Highstar Footprint Holdings GP, LLC) (2253); Highstar Salem Harbor Power Holdings L.P. (f/k/a Highstar Footprint Power Holdings L.P.) (9509); Salem Harbor Power FinCo GP, LLC (f/k/a Footprint Power Salem Harbor FinCo GP, LLC) (N/A); Salem Harbor Power FinCo, LP (f/k/a Footprint Power Salem Harbor FinCo, LP) (9219); and SH Power DevCo GP LLC (f/k/a Footprint Power SH DevCo GP LLC) (9008). The location of the Debtors' service address is: c/o Tateswood Energy Company, LLC, 480 Wildwood Forest Drive, Suite 475, Spring, Texas 77380.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion or the Disclosure Statement, as applicable.

Court for the District of Delaware, dated as of February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that due and proper notice of the Motion and the hearing thereon was adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having reviewed the Motion; and upon the Motion and the record of any hearing on the Motion, as applicable; and this Court having determined that the legal and factual bases set forth in the Motion and at any applicable hearing establish just cause for the relief granted herein and that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

I. Approval of the Disclosure Statement

2. The Disclosure Statement is hereby approved as providing holders of Claims entitled to vote on the Plan with adequate information to make an informed decision as to whether to vote to accept or reject the Plan in accordance with section 1125(a)(1) of the Bankruptcy Code.

3. The Disclosure Statement (including all applicable exhibits thereto) provides holders of Claims, holders of Interests, and other parties in interest with sufficient notice of the injunction, exculpation, and release provisions contained in Article VIII of the Plan, in satisfaction of the requirements of Bankruptcy Rule 3016(c).

II. Approval of the Solicitation and Voting Procedures

4. The Debtors are authorized to solicit, receive, and tabulate votes to accept the Plan in accordance with the Solicitation and Voting Procedures attached hereto as **Exhibit 1**, which are hereby approved in their entirety.

5. Any party wishing to file a motion under Bankruptcy Rule 3018(a) to temporarily allow a Claim or Interest for purposes of voting to accept or reject the Plan shall have until ten (10) days from the later of (a) the mailing of the Confirmation Hearing Notice and (b) the filing of a claim objection to file such a motion. The Debtors and other parties in interest shall have until the date that is ten (10) days prior to the Voting Deadline as the deadline by which the Debtors or other parties in interest must file objections to any motion filed pursuant to Bankruptcy Rule 3018(a).

III. Approval of the Materials and Timeline for Soliciting Votes

A. Approval of Key Dates and Deadlines with Respect to the Plan and Disclosure Statement

6. The following dates are hereby established (subject to modification as necessary) with respect to the solicitation of votes to accept, and voting on, the Plan:

- a. **June 28, 2022** shall serve as the date of record for holders of Class 3 Credit Facility Secured Claims, Class 4 IEP Judicial Lien Claims (if applicable), and Class 5 General Unsecured Claims for purposes of voting on the Plan (the “Voting Record Date”);
- b. the Debtors shall distribute Solicitation Packages to holders of Claims entitled to vote on the Plan by the date that is three (3) business days from the entry of this Order (the “Solicitation Deadline”);
- c. the Debtors shall file the initial Plan Supplement by the date that is ten (10) days prior to the Voting Deadline (as defined below) (such date, the “Plan Supplement Filing Date”); and
- d. all holders of Claims entitled to vote on the Plan must complete, execute, and return their Ballots so that they are **actually received** by the Solicitation Agent pursuant to the Solicitation and Voting Procedures, on or before **August 5, 2022, at 4:00 p.m.** prevailing Eastern Time (the “Voting Deadline”).

B. Approval of the Form of, and Distribution of, Solicitation Packages to Parties Entitled to Vote on the Plan

7. In addition to the Disclosure Statement and exhibits thereto, the Solicitation Packages to be transmitted on or before the Solicitation Deadline to those holders of Claims in Class 3, Class 4 (if applicable), and Class 5 (collectively, the “Voting Classes”) entitled to vote on the Plan as of the Voting Record Date, shall include the following, the form of each of which is hereby approved:

- a. an appropriate form of Ballot attached hereto as Exhibits 2A, 2B, and 2C respectively;³
- b. the Cover Letter attached hereto as Exhibit 6
- c. the Confirmation Hearing Notice attached hereto as Exhibit 7; and
- d. this Order (without exhibits, except the Solicitation and Voting Procedures).

8. The Solicitation Packages provide the holders of Claims entitled to vote on the Plan with adequate information to make informed decisions with respect to voting on the Plan in accordance with the Bankruptcy Code, Bankruptcy Rules 2002(b) and 3017(d), and Local Rules 2002-1 and 3017-1.

9. The Debtors shall distribute Solicitation Packages to all holders of Claims entitled to vote on the Plan on or before the Solicitation Deadline. Such service shall satisfy the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

10. The Debtors are authorized, but not directed or required, to distribute the Plan, the Disclosure Statement, and this Order (without exhibits, except the Solicitation and Voting Procedures) to holders of Claims entitled to vote on the Plan in electronic format (*i.e.*, flash drive).

³ The Debtors will use commercially reasonable efforts to ensure that any holder of a Claim who has filed duplicate Claims against the Debtors (whether against the same or multiple Debtors) that are classified under the Plan in the same Voting Class, receives no more than one Solicitation Package (and, therefore, one Ballot) on account of such Claim and with respect to that Class.

Only the Ballots, as well as the Cover Letter and the Confirmation Hearing Notice, must be provided in paper form. On or before the Solicitation Deadline, the Debtors (through their Solicitation Agent) shall provide complete Solicitation Packages (other than Ballots) to the Office of the United States Trustee for the District of Delaware and to all parties on the Rule 2002 List as of the Voting Record Date.

11. Any party that receives the materials in electronic format that would prefer to receive materials in paper format may contact the Solicitation Agent and request paper copies of the corresponding materials previously received in electronic format (to be provided at the Debtors' expense).

12. The Solicitation Agent is authorized to assist the Debtors in: (a) distributing the Solicitation Package; (b) receiving, tabulating, and reporting on Ballots cast to accept or reject the Plan by holders of Claims against the Debtors; (c) responding to inquiries from holders of Claims and Interests and other parties in interest relating to the Disclosure Statement, the Plan, the Ballots, the Solicitation Packages, and all other related documents and matters related thereto, including the procedures and requirements for voting to accept or reject the Plan and for objecting to the Plan; and (d) soliciting votes on the Plan.

13. The Solicitation Agent is also authorized to accept Ballots via electronic online transmission solely through a customized online balloting portal on the Debtors' case website. The encrypted data and audit trail created by such electronic submission shall become part of the record of any Ballot submitted in this manner and the creditor's electronic signature will be deemed to be immediately legally valid and effective. Ballots submitted via the customized online balloting portal shall be deemed to contain an original signature.

14. All votes to accept or reject the Plan must be cast by using the appropriate Ballot. All Ballots must be properly executed, completed, and delivered according to their applicable voting instructions by: (a) first-class U.S. mail, in the return envelope provided with each Ballot; (b) overnight delivery; or (c) personal delivery, such that the Ballots are actually received by the Solicitation Agent no later than the Voting Deadline at the return address set forth in the applicable Ballot. Alternatively, Ballots may be submitted electronically through the Solicitation Agent's online Ballot submission portal at <https://cases.ra.kroll.com/salemharbor> by no later than the Voting Deadline. The Debtors are authorized to extend the Voting Deadline in their sole discretion without further order of this Court.

C. Approval of the Confirmation Hearing Notice

15. The Confirmation Hearing Notice, substantially in the form attached hereto as Exhibit 7 is approved and shall be deemed good and sufficient notice of the Confirmation Hearing and no further notice need be given. The Debtors shall file and serve the Confirmation Hearing Notice upon parties in interest in these chapter 11 cases (including all parties in interest identified in the Debtors' consolidated creditor matrix) by no later than the date that is three (3) business days from the entry of this Order. The Debtors shall also cause the Confirmation Hearing Notice, as may be modified for purposes of publication, to be published one time on or before the date that is seven (7) business days from the entry of this Order in the national edition of one of the following newspapers: *The Wall Street Journal*, *The New York Times*, or *USA Today*, and in *The Boston Globe*. Service of the Confirmation Hearing Notice, as well as the publication of such notice, as set forth herein constitutes adequate and sufficient notice of the hearings to consider approval of the Plan, the manner in which a copy of the Plan could be obtained, and the time fixed for filing objections thereto, in satisfaction of the requirements of the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

D. Approval of Notice of Filing of the Plan Supplement

16. The Debtors are authorized to send notice of the filing of the Plan Supplement, which shall be filed and served at least ten (10) days prior to the Voting Deadline, on the date the Plan Supplement is filed or as soon as reasonably practicable thereafter.

E. Approval of the Form of Notices to Non-Voting Classes

17. Except to the extent that the Debtors determine otherwise, the Debtors are not required to provide Solicitation Packages to holders of Claims or Interests in Classes 1, 2, 6, 7, and 8 (collectively, the “Non-Voting Classes”), as such holders are not entitled to vote on the Plan. Instead, on or before the Solicitation Deadline, the Solicitation Agent shall mail (first-class postage pre-paid) a Non-Voting Status Notice in lieu of Solicitation Packages, the form of each of which is hereby approved, to those parties outlined below that are not entitled to vote on the Plan:

- a. ***Not Impaired Claims—Conclusively Presumed to Accept.*** Holders of Claims in Classes 1 and 2 are not impaired under the Plan and, therefore, are conclusively presumed to have accepted the Plan. As such, holders of such Claims will receive a notice, substantially in the form attached hereto as Exhibit 3, in lieu of a Solicitation Package.
- b. ***Other Interests and Claims—Deemed to Reject.*** Holders of Interests in Classes 8 are receiving no distribution under the Plan and, therefore, are deemed to reject the Plan and will receive a notice, substantially in the form attached hereto as Exhibit 4, in lieu of a Solicitation Package.
- c. ***Disputed Claims.*** Absent a Resolution Event (as defined in the Solicitation and Voting Procedures), holders of Claims that are subject to a pending objection by the Debtors filed on or before the Solicitation Deadline are not entitled to vote the disputed portion of their claim. As such, holders of such Claims will receive a notice, substantially in the form attached to this Order as Exhibit 5.

18. The Debtors are not required to mail Solicitation Packages or other solicitation materials to: (a) holders of Claims that have already been paid in full during these chapter 11 cases pursuant to an order previously entered by this Court; or (b) any party to whom notice of the Disclosure Statement Hearing was sent but subsequently returned as undeliverable. The Debtors

are likewise authorized to rely on the address information for the Voting and Non-Voting Classes as compiled and maintained by the Solicitation Agent as of the Voting Record Date, such that the Debtors and Solicitation Agent will not be required to conduct any additional research for updated addresses based on undeliverable Solicitation Packages or Notices of Non-Voting Status and will not be required to resend Solicitation Packages or other materials, including Notices of Non-Voting Status, that are returned as undeliverable unless the Debtors are provided with accurate addresses for such parties at least seven (7) days prior to the Voting Deadline.

19. The Debtors are not required to provide the holders of Class 6 Intercompany Claims and Class 7 Intercompany Interests with a Solicitation Package or any other type of notice in connection with solicitation or Plan confirmation.

F. Approval of Notices to Contract and Lease Counterparties

20. The Debtors are authorized to mail a notice of assumption (or assumption and assignment) or rejection of any Executory Contracts or Unexpired Leases (and any corresponding cure claims), in the forms attached hereto as Exhibit 8 and Exhibit 9 to the applicable counterparties to Executory Contracts and Unexpired Leases that will be assumed (or assumed and assigned) or rejected pursuant to the Plan (as the case may be), within the time periods specified in the Plan. For the avoidance of doubt, a holder of a claim associated with a Rejected Executory Contract and Unexpired Lease shall only be entitled to vote on account of such claim if it is reflected on the Solicitation Agent's claims register as of the Voting Record Date.

IV. Approval of Procedures for Confirming the Plan

A. Approval of the Timeline for Filing Objections to the Plan and Confirming the Plan

21. The following dates are hereby established (subject to modification as needed) with respect to filing objections to the Plan and confirming the Plan:

- a. **August 5, 2022, at 4:00 p.m.** prevailing Eastern Time shall be date by which objections to the Plan must be filed with this Court and served on the appropriate notice parties (as identified below) (the “Plan Objection Deadline”);
- b. **August 12, 2022, at 10:00 a.m.** prevailing Eastern Time shall be the date by which the Voting Report must be filed with this Court;
- c. **August 12, 2022, at 10:00 a.m.** prevailing Eastern Time shall be the date by which replies to objections to the Plan must be filed with this Court and served by the appropriate notice parties (as identified below) (the “Plan Objection Reply Deadline”)
- d. **August 12, 2022, at 10:00 a.m.** prevailing Eastern Time shall be the date by which the Debtors shall file their brief in support of Confirmation; and
- e. this Court shall consider Confirmation of the Plan at the hearing to be held on **August 16, 2022, at 10:30 a.m.** prevailing Eastern Time (the “Confirmation Hearing Date”).

B. Approval of the Procedures for Filing Objections to the Plan

22. Objections to the Plan will not be considered by this Court unless such objections are timely filed and properly served in accordance with this Order. Specifically, all objections to confirmation of the Plan or requests for modifications to the Plan, if any, must: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Rules; (c) state, with particularity, the legal and factual basis for the objection and, if practicable, a proposed modification to the Plan (or related materials) that would resolve such objection; and (d) be filed with this Court (contemporaneously with a proof of service) and served upon the notice parties identified in the Confirmation Hearing Notice on or before **August 5, 2022, at 4:00 p.m.** prevailing Eastern Time.

V. Miscellaneous

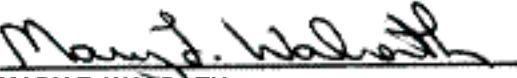
23. The Debtors’ right to modify the Plan in accordance with Article X thereof, including the right to withdraw the Plan as to any or all Debtors at any time before the Confirmation Hearing Date, is hereby reserved.

24. Nothing in this Order shall be construed as a waiver of the right of the Debtors or any other party in interest, as applicable, to object to a proof of claim after the Voting Record Date.

25. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

26. This Court shall retain exclusive jurisdiction over all matters arising from or related to the interpretation, implementation, and enforcement of this Order.

Dated: June 30th, 2022
Wilmington, Delaware



MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE